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January 10, 2003

Ms. Rebecca Kane  
Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
MC 2222A  
1200 Pennsylvania Avenue, NW.  
Washington, DC 20460

RE: Formal comments on the Enforcement and Compliance History Online (ECHO) database.

Dear Ms. Kane:

Please accept this letter as formal comments concerning the Enforcement & Compliance History Online (ECHO) database recently brought online as a pilot site. The below signatories are pleased that the U.S. Environmental Protection Agency (EPA) has begun the process of centralizing the critical information citizens need in order to protect the environment in which they live. The present stage of ECHO does an excellent job of providing basic information to the public about what facilities are in their communities that have the potential to affect their environment and well-being.

Nonetheless, it is important that the regulating agencies' guiding principles be founded upon the wisdom that placing harmful contaminants into a community's environment is a privilege granted by the governments which serve that community and not a right which is bought from the officials within those governments. Thus, there is no information that should be withheld from the strictest of citizen overview.

First, citizens need to know what contaminants enter their community through every possible medium. Thus, two unfortunate glaring omissions in the data set are underground injection wells and aquifer storage and recovery wells. There are tens of thousands of these wells around the country injecting and storing large quantities of hazardous waste and untreated sewage and stormwater. Much like Title V, NPDES and RCRA permits, these underground injection wells and aquifer storage and recovery wells must meet certain state and federal parameters in their permits. It is imperative that citizens know what lies beneath them simply waiting to move through the aquifers supplying them with drinking water.

Second, while ECHO is a big first step in providing easier centralized access to information, the database should be extended to include access to information about each of the violations, as well as the data showing compliance with other parameters. States vary in the ease of access to information concerning violations and often respond to requests for information by requiring

the citizens to go and review the permit files held at the agency headquarters rather than just sending copies of the requested information. Not only does this make access to this information nearly out of the reach of many low-income people, but also greatly discourages most other citizens as well. In addition, many citizens live several hundred miles from agency headquarters and traveling that distance to obtain that information is simply impracticable. Thus, ECHO could be a great leap forward in information access if it were expanded to include specific details on the non-compliance and violations of the regulated entities.

In addition, ECHO should provide access to data submitted on each of the legally enforceable discharge and emission parameters that must be met in each of the applicable permits. By providing that information, citizens are guaranteed that the regulating agency is properly gathering and monitoring the data submitted by the regulated entities. This is especially critical under air quality operating permits, such as Title V operating permits, where many emission standards are presumed to be met through fuel and operating limitations and complex emission equations.[1] Requiring this information to be included in submissions to ECHO provides reassurance and proof that emission limitations are being properly enforced.

Third, ECHO should include either direct information on any pending permit applications, modifications or renewals or links to where a citizen can determine whether any such documents are before a regulating agency. This information will provide citizens with important information about the future likelihood of increased or decreased exposure to contamination.

In a related vein, the new administration has touted the idea that current environmental laws such as the New Source Review program has hindered installation and upgrade of equipment which would lower emission levels. Thus, the administration has created a public relations image that industry will regulate itself to lower emissions by voluntarily taking on new upgrades and construction that otherwise would not have ever happened. Quite frankly, the administration should provide the proof of its claims by placing information on ECHO showing significant emission reductions that were not the product of Notices of Violation or other legally enforceable provisions required before construction and operation of new, modified or upgraded units. Thus, ECHO should reflect the voluntary efforts made by facilities to reduce emissions.

Fourth, we would like to take this moment to comment on the Florida Department of Environmental Protection's statement to the Associated Press that the EPA has published faulty and unverified information. Obviously, there will always be a time lag between computer data and physical completion of inspection reports and monitoring data. Furthermore, if truly that many facilities in Florida are not in current violation of federal pollution laws, then there would seem to be an unsettling communications problem among the regulating agencies which does not bode well for over-all enforcement of federal and state pollution laws. We are confident that EPA will work with all regulatory bodies to minimize this time lag. Nonetheless, states must take the dissemination of information as seriously as EPA. The above-mentioned underground injection wells is a prime example of where the Florida DEP has decided to remove the information from its website and make access to the information extremely difficult.

Finally, several commentators have expressed dissatisfaction with EPA making this information easily and anonymously available on the grounds that the facility information and census data pose a threat to national security. Under the guise of national security, corporations and the current administration have pushed for removing from public scrutiny-anonymously available

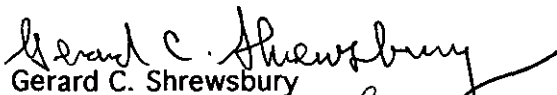
or not-a vast array of information about the chemicals being used and produced and the contaminants being emitted from tens of thousands of facilities. Although the times call for precaution, they do not call for an abandonment of reason and accountability. Again, the principle must be followed that these contaminants are released as a privilege and not a right.

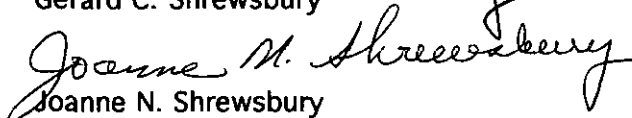
Removing this information from ECHO is a pure smokescreen for several reasons. Nearly all of the information available on ECHO is available anonymously from several other on-line databases such as the Census Bureau and the Toxic Release Inventory. While TRI and the Census databases will give a person information on what chemicals are produced or available somewhere and what population may be affected, only ECHO provides the information on whether a facility is in violation of federal environmental statutes. In addition, providing the demographic profile of the immediate area around a facility should be considered as a requirement under Title VI of the Civil Rights Act of 1964. Title VI prohibits any entity receiving federal funds-i.e., state regulating agencies-from engaging in discriminatory practices. At this time, however, the state of Georgia openly refuses to consider race and economic conditions in its permitting decisions. Providing the demographic profile on ECHO allows the public to easily see whether the state's permitting processes are allowing or resulting in disparate impact to low-income and minority communities.

Also, the idea that ECHO access is truly anonymous most likely is incorrect, as EPA's software most likely can record what computers access their website. Without an exemption to FOIA, any official record of access to ECHO may be subject to a records request and would deter several different groups, including employees who wish to have knowledge about their workplace and employers.

Therefore, we applaud EPA's effort to make information about facilities and violations of federal law more accessible to the public. We urge EPA to heed this mission and not withdraw the database on the guise of national security or states' failures to provide up-to-date data. Indeed, we implore EPA to continue to expand the information available to include underground injection wells and aquifer storage and recovery wells, specific information on each violation, and all monitoring data that facilities report to regulating agencies.

Sincerely yours,

  
Gerard C. Shrewsbury

  
Joanne N. Shrewsbury